

UNITED STATES PATENT AND TRADEMARK OFFICE

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD J. FOLIO

Application No. 09/896,894

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on January 30, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith returned to the examiner. The matters requiring attention prior to docketing are identified below.

On October 26, 2004, an Order Returning Undocketed Appeal was mailed which requested clarification under MPEP § 1211 regarding the pertinence of the Denenberg reference listed on page 15 of the Examiner's Answer mailed August 12, 2003. In addition, it was requested that corrective action be taken regarding the appeals conference. According to the PALM Intranet

Content Information page, a second or supplemental Examiner's Answer was mailed on April 25, 2005. It should be noted that only the first page of this correspondence appears in the Image File Wrapper (IFW). Correction of this matter is required.

In addition, a Reply Brief was filed on June 27, 2005 in response to the Examiner's Answer mailed April 25, 2005. However, there is no indication in the record regarding whether or not the examiner has considered the Reply Brief. 37 CFR § 41.43 reads as follows:

§ 41.43 Examiner's response to reply brief.

(a) (1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

(2) A supplemental examiner's answer responding to a reply brief may not include a new ground of rejection.

(b) If a supplemental examiner's answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner's answer within two months from the date of the supplemental examiner's answer.

(c) Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications.

Accordingly, it is

ORDERED that the application is returned to the examiner:

1. for locating a complete copy of the Examiner's Answer mailed April 25, 2005 and having it scanned into the IFW file;
2. for consideration of and proper response to the Reply Brief filed June 27, 2005; and
3. for such further action as may be appropriate.

BOARD OF PATENT APPEALS
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By: 

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CRF:psb

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